

KEN WILEY

IBLA 80-905

Decided May 18, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 45907.

Affirmed.

1. Evidence: Generally--Oil and Gas Leases: Applications: Generally

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ken Wiley appeals from a decision dated August 1, 1980, by the Montana State Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offer M 45907 for failure to file timely a form captioned Certification of Qualifications to Hold Federal Oil and Gas Lease -- Simultaneous (Certification) based on regulation requirements in 43 CFR Subparts 3101 and 3102.

Appellant's drawing entry card (DEC) was the first drawn for parcel 143 in the January 1980 drawing. On February 15, 1980, BLM issued a decision requiring appellant to supply additional information, sign a special stipulation form, and advised appellant to pay the advance rental. Appellant complied.

On February 29, 1980, the Secretary of the Interior issued Order No. 3049 by which he suspended the issuance of Federal noncompetitive oil and gas leases. Section 3(b)(4) of that order directed BLM not to issue any lease or reject any applications on offers pending prior to

the date of the order. Accordingly, no lease was issued to appellant. The reason for the suspension was to allow the Department to investigate abuses within the noncompetitive oil and gas leasing system. The pertinent part of Order No. 3049 was revoked by Secretarial Order No. 3051 dated April 7, 1980, effective April 18, 1980, which directed BLM to resume issuing noncompetitive leases on pending lease applications under certain conditions pursuant to the Secretary's decision of April 7, 1980. That portion of the decision specifically addressed to pending lease applications conditioned issuance of a lease on an applicant's providing a signed certification that no false statements had been made in the application concerning "parties in interest."

Pursuant to Secretarial Order No. 3051, BLM on June 10, 1980, forwarded to appellant a copy of the certification by certified mail, return receipt required, advising him to return the completed form to BLM within 30 days. That letter was returned by the Postal Service on June 20, 1980. 1/ On July 1, 1980, BLM sent appellant a second letter by regular mail which was not returned. 2/ When BLM heard nothing from appellant, the decision appealed from was issued. That decision states in pertinent part as follows:

On May 8, 1980 [3/] and June 10, 1980, certified letters were sent to you at the two addresses of record. Those letters contained a Notice to you requiring that in order to establish your qualifications to hold a Federal oil and gas lease, you must complete the certification which was enclosed and return it to this office within 30 days. Both of them were returned by the post office as unclaimed. On July 1, 1980, the same notice was sent to you by regular mail to the address in Aurora. No certification has been received and the post office has not returned the letter.

The completed certification has not been received and therefore, you have failed to demonstrate your qualifications to hold this oil and gas lease. Your offer is hereby rejected.

On appeal appellant contends that since appellant was the first qualified applicant for the lease BLM could not reject his offer for

1/ Appellant is considered to have been served as of this date, such constructive service being equivalent in legal effect to actual service of the document. See Lite Sabine, 51 IBLA 226, 230 (1980).

2/ This letter is presumed to have been delivered, thus appellant was afforded an extended period to comply.

3/ The letter of May 8, 1980, was sent to appellant at a previous address which appellant had corrected on March 11, 1980. The BLM letters of June 10 and July 1 were mailed to appellant at the corrected address.

failing to comply with the 30-day time period for returning the completed certification because Secretarial Order No. 3051 did not impose a time limit, that prior decisions of the Board do not justify rejection of the offer, and that the rejection is founded on a trivial and inconsequential point. We disagree and conclude that BLM properly rejected appellant's offer.

[1] Secretarial Order No. 3051 authorized BLM to proceed to issue leases on pending applications under certain conditions listed in his decision of April 7, 1980. That decision required BLM to obtain additional certification from applicants that no false statements were made in the application concerning parties in interest. The fact that neither the order nor decision refers to a time limit for submission of the document would not preclude BLM from devising orderly administrative procedures to obtain the certificates. The BLM decision prescribed a time limit and appellant was obliged to comply in order to establish his qualifications to have his offer accepted and unless he did so it was inappropriate for BLM to accept his offer. The fact that some of the same information required in the certification had been previously submitted to BLM in another form does not excuse appellant from timely filing the certification required by Secretarial Order No. 3051.

Previous Board decisions clearly demonstrate that BLM may request whatever information is necessary to clarify the status of an offer and that it may set time limits for the filing of such information. We stated in W. H. Gilmore, 41 IBLA 25, 31 (1979):

We have frequently held that where a BLM State Office is not satisfied as to compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the questions. Ray H. Thames, 31 IBLA 167 (1977); Charlotte Thornton, 31 IBLA 3 (1977); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); Mary E. Niland, 28 IBLA 300 (1977); Arthur S. Watkins, 28 IBLA 79 (1976); William J. Sparks, 27 IBLA 330 (1976); Robert C. Leary, supra. Under these cases BLM may demand of the offeror whatever relevant information it requires.

Moreover, where an oil and gas offeror fails or refuses to respond within a prescribed time to an order directing him to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Lee S. Bielski, 39 IBLA 211 (1979); Ricky L. Gifford, 34 IBLA 160 (1978). If the lease has already issued, it may be canceled upon the lessee's failure to submit additional information which BLM properly required. Robert A. Chenoweth, 38 IBLA 285 (1978).

Applicants cannot be relieved of reasonable time limits set by BLM when it requires the filing of additional information in instances where time limits are not prescribed by regulation or Secretarial order. Such a result is untenable as a practical matter and is not supported by controlling decisions. It is obvious that BLM's orderly administration and processing of oil and gas lease applications would be adversely affected if offerors were not subject to filing time constraints or could arbitrarily set their own dates for responding.

It is unfortunate that appellant did not receive the BLM notices due to his absence from his address of record. However, it was appropriate for BLM to reject his offer when no timely response was forthcoming. Arthur Ancowitz, 53 IBLA 69, 70 (1981); J. Thomas Lewis, 50 IBLA 350, 351 (1980). While appellant has submitted the completed certification to the Board on appeal this does not change the result. The certification to be timely filed had to be filed with BLM within 30 days of receipt thereof. 43 CFR 1821.2-2(e). Nor can we agree that rejection of the offer was made for a "trivial and inconsequential" reason. The authorities cited by appellant for this proposition involve completely different factual circumstances and are not on point.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While in agreement with the result reached in the majority decision, I wish to address separately various aspects of the question presented by the instant appeal. Succinctly stated, appellant alleges that for failure to file timely a recertification of various statements already made he has lost his status as the first qualified applicant, despite the fact that his timely answer would not have deprived his offer of priority. Appellant, in effect, argues that since the Secretarial order which required recertification did not specify a time limit, and since there is nothing in the applicable regulations or statutes which relate to a time period for compliance with such a request, BLM lacks authority to deprive appellant of his priority for such a "trivial reason."

Implicit in this argument is the contention that, absent specified authority, BLM is precluded from requiring that any document be filed within a time certain. Thus, appellant seeks to distinguish those cases in which the regulations or statute clearly specify periods in which compliance must be made with the instant case where the time period was established by a decision. I do not believe this position can be sustained.

Subsequent to the filing of appellant's statement of reasons, this Board has, on at least two occasions, expressly held that failure to comply timely with valid requests for information from BLM necessitates rejection of a lease offer. See Arthur Ancowitz, 53 IBLA 69 (1981); J. Thomas Lewis, 50 IBLA 350, 351 (1980). But even before these decisions issued, prior Board decisions clearly indicated that rejection of offers was mandated where there had not been timely compliance with proper requests for information.

Thus, in Mobil Oil Corp., 35 IBLA 375 (1978), the Board noted that, where a timely notice of appeal had been filed during the period granted an oil and gas lessee to comply with a BLM request, the notice of appeal suspended the effect of the decision until the Board ruled thereon, and, after the Board's decision on the appeal, an appellant was to be afforded the full time originally mandated by the State Office in which to comply with the decision. See also Paul H. Sleeper, 22 IBLA 318 (1975). Intrinsic to these decisions, however, was the fact that the notice of appeal had, itself, been filed within the period set for compliance.

Moreover, while the regulations suffer from some opacity on this point, I would point out that 43 CFR 1821.2-2(e) provides:

Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls

on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.
[Emphasis supplied.]

Admittedly, this is the only reference in this subpart to filing requirements established by decision; but it would be ludicrous to promulgate a regulation which is of remedial effect if no penalty could be applied for failure to comply with these time periods.

Finally, and most critically, appellant's argument would mean that all time limits set forth in BLM decisions are meaningless, the critical question becoming whether, before this Board's decision issues, an oil and gas lease applicant decides to comply with the request for information. While in this case appellant did not actually receive the decision, his argument would apply with equal strength to one who did receive it but decided to wait his good time in complying. Considering the massive volume of oil and gas lease offers which BLM annually processes, such a result would lead to chaos in adjudication, a considerable waste of this Board's resources, and extended delays in the issuance of numerous leases. These concerns are neither trivial nor inconsequential.

When an offeror has failed either to comply with a request for information or appeal within the time that such information can be filed, I believe the only issue which can be raised in a subsequent appeal is whether the information was properly requested. Inasmuch as the recertification required in the instant case was the result of a direct Secretarial order I think it clear that this Board must find the request for recertification was proper. Accordingly, I agree with the majority decision.

James L. Burski
Administrative Judge

